

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

THE PENNSYLVANIA STATE
UNIVERSITY,

Plaintiff,

v.

VINTAGE BRAND, LLC;
SPORTSWEAR, INC., dba PREP
SPORTSWEAR; CHAD
HARTVIGSON; ERIK
HARTVIGSON; MICHELLE
YOUNG

Defendants.

Case No. 4:21-cv-01091-MWB

JURY TRIAL DEMANDED

Plaintiff The Pennsylvania State University's
Motion for Partial Summary Judgment

Pursuant to Federal Rule of Civil Procedure 56, and for the reasons set forth in the accompanying Brief and Statement of Undisputed Material Facts, Plaintiff The Pennsylvania State University ("Penn State"), hereby respectfully moves for partial summary judgment. Specifically, Penn State moves for judgment as a matter of law on the following grounds.

A. Contested Grounds for Relief

Penn State should be granted judgment as a matter of law on the following Counts:

1) Count I of the Second Amended Complaint for Federal Trademark

Infringement with respect to the following registered trademarks:

- a. U.S. Registration No. 1,308,610 (PENN STATE);
- b. U.S. Registration No. 5,766,698 (PENN STATE);
- c. U.S. Registration No. 1,315,693 (THE PENNSYLVANIA STATE UNIVERSITY);
- d. U.S. Registration No. 5,399,989 (THE PENNSYLVANIA STATE UNIVERSITY);
- e. U.S. Registration No. 5,742,516 (THE PENNSYLVANIA STATE UNIVERSITY);
- f. U.S. Registration No. 1,276,712 (University Seal);
- g. U.S. Registration No. 5,877,080 (University Seal);
- h. U.S. Registration No. 1,350,286 (Lion Shrine Logo);
- i. U.S. Registration No. 1,397,810 (Lion Shrine Logo)
- j. U.S. Registration No. 5,305,910 (Pozniak Lion Logo)

2) Count II of the Second Amended Complaint for Counterfeiting of the following registered trademarks:

- a. U.S. Registration No. 1,308,610 (PENN STATE);
- b. U.S. Registration No. 5,766,698 (PENN STATE);
- c. U.S. Registration No. 1,315,693 (THE PENNSYLVANIA STATE UNIVERSITY);

- d. U.S. Registration No. 5,399,989 (THE PENNSYLVANIA STATE UNIVERSITY);
 - e. U.S. Registration No. 5,742,516 (THE PENNSYLVANIA STATE UNIVERSITY);
 - f. U.S. Registration No. 1,276,712 (University Seal);
 - g. U.S. Registration No. 5,877,080 (University Seal);
 - h. U.S. Registration No. 1,350,286 (Lion Shrine Logo); and
 - i. U.S. Registration No. 5,305,910 (Pozniak Lion Logo).
- 3) Counts III and VII of the Second Amended Complaint for Unfair Competition, including based on Penn State's registered and common law rights in the following marks:
- a. PENN STATE;
 - b. THE PENNSYLVANIA STATE UNIVERSITY;
 - c. The University Seal;
 - d. The Lion Shrine Logo;
 - e. The Pozniak Lion Logo; and
 - f. The S Lion Logo.
- 4) Count IV of the Second Amended Complaint for False Endorsement based on Defendants' false representations relating to endorsement or sponsorship by Penn State on the Vintage Brand Website.

Defendants' Counterclaims below should be dismissed as a matter of law and judgment issued in Penn State's favor:

- 5) Count I of Vintage Brand's Counterclaims (Dkt. [72](#)) to cancel U.S. Registration Nos. 5,766,698 and 5,877,080 as merely ornamental;
- 6) Count II of Vintage Brand's Counterclaims (Dkt. [72](#)) to cancel U.S. Registration Nos. 1,276,712 and 5,877,080 as unregistrable pursuant to 15 U.S.C. § 1052(b); and
- 7) Affirmative Defenses 7-8 asserted by each Defendant (Dkt. [72](#), [75](#), [76](#), [77](#), [78](#)) which assert that the marks at issue are merely ornamental;

Further, Penn State moves the Court for an order that Penn State is entitled to a permanent injunction enjoining Defendants' infringing conduct, with Penn State to submit a proposed order regarding the form of injunction consistent with the Court's opinion and ruling on the instant Motion following the issuance of an order.

Penn State has conferred with counsel for Defendants on the above claims, and Defendants do not consent to the relief Penn State requests.

B. Uncontested Grounds for Relief

Penn State further moves the Court for judgment as a matter of law on Affirmative Defenses 2-3 asserted by each Defendant (Dkt. [72](#), [75](#), [76](#), [77](#), [78](#)) which assert that Penn State's affirmative claims are barred and/or limited by the statute of limitations and laches. Defendants commenced their infringing conduct in 2018,

and Penn State commenced this action in 2021. There is no evidence in the record that could support these affirmative defenses.

Penn State has conferred with counsel for Defendants on the above claims, and Defendants do consent to judgment being granted to Penn State as a matter of law on these Affirmative Defenses 2-3.

* * *

Penn State respectfully requests that this Court grant the relief set forth in the accompanying Proposed Order.

Dated: June 2, 2023

Respectfully submitted,

McGuireWoods LLP

By: /s/Lucy Jewett Wheatley

Lucy Jewett Wheatley (*Pro Hac Vice*)

Claire Hagan Eller (*Pro Hac Vice*)

Matthew George Rosendahl (*Pro Hac Vice*)

McGuireWoods LLP

800 East Canal Street

Richmond, VA 23219

Tel: (804) 775-1368

Fax: (804) 698-2130

Email: lwheatley@mcguirewoods.com

Email: celler@mcguirewoods.com

Email: mrosendahl@mcguirewoods.com

Allison Ebeck, Esquire

Pa. I.D. No. 322837

McGuireWoods LLP

Tower Two Sixty – Suite 1800

260 Forbes Avenue

Pittsburgh, PA 15222
(412) 667-6000
E-mail: aebeck@mcguirewoods.com

*Attorneys for The Pennsylvania State
University*

CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE

I hereby certify that on June 1 and 2, 2023, counsel for Penn State conferred with Defendants' counsel regarding the relief that Penn State seeks in this Motion. Defendants' counsel concurred with Penn State on the relief sought in part, as is reflected in the Motion.

By: /s/ Lucy Jewett Wheatley
Lucy Jewett Wheatley (*Pro Hac Vice*)
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
Tel: (804) 775-1368
Fax: (804) 698-2130
Email: lwheatley@mcguirewoods.com

*Attorney for The Pennsylvania State
University*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Partial Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system on June 2, 2023, which constitutes service on Defendants pursuant to Fed. R. Civ. P. 5(b)(2)(E):

Jodi S. Wilenzik, Esquire
PA Supreme Court I.D. No. 89205
Marc H. Perry, Esquire
PA Supreme Court I.D. 6810
POST & SCHELL, P.C.
1600 JFK Boulevard, 13th Floor
Philadelphia, PA 19103
jwilenzik@postschell.com
mperry@postschell.com

Leslie Vander Griend, Esquire (Pro Hac Vice)
John Fetters, Esquire (Pro Hac Vice)
Bradford J. Axel (Pro Hac Vice)
Joshua D. Harms (Pro Hac Vice)
Valerie A. Walker (Pro Hac Vice)
Theresa H. Wang (Pro Hac Vice)
STOKES LAWRENCE, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
Leslie.VanderGriend@stokeslaw.com
John.Fetters@stokeslaw.com
josh.harms@stokeslaw.com
valerie.walker@stokeslaw.com
bj@stokeslaw.com
Theresa.wang@stokeslaw.com

By: /s/ Lucy Jewett Wheatley
Lucy Jewett Wheatley (Pro Hac Vice)
McGuireWoods LLP

800 East Canal Street
Richmond, VA 23219
Tel: (804) 775-1368
Fax: (804) 698-2130
Email: lwheatley@mcguirewoods.com

*Attorney for The Pennsylvania State
University*